

Message

From: Crawford, Dorothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22442C0DAD249C1B798271CB981B12F-CRAWFORD, DOROTHY]
Sent: 9/30/2019 12:56:18 PM
To: Diana Scholtz [Diana.Scholtz@deq.ok.gov]
CC: Verhalen, Frances [verhalen.frances@epa.gov]; Madden, Joshua [madden.joshua@epa.gov]
Subject: RE: SMP info
Attachments: 2016 9 13 EPA Responses to comments final.pdf

I am not sure which 'Interim Fire Policy' you meant. If the EPA policy existed before the 2016 Exceptional Events Rule, then I believe it has been superseded by the rule.

The 2016 Final EE Rule federal register states 'This final action supersedes the 2007 Exceptional Events Rule and all natural events and exceptional events data handling guidance developed prior to the 2007 Exceptional Events Rule. This final action also supersedes the 2013 Interim Exceptional Events Implementation Guidance.'

The EPA Question and Answer document for the 2016 EE Rule repeats this 'Comment: One commenter (D168) stated this rulemaking should supersede all previous rule language and guidance on the treatment of exceptional events. Commenter stated that, if the EPA determines this is not appropriate, the EPA should include specific lists of guidance documents that will be superseded and guidance documents which will still be valid to remove any confusion on the part of state, local and tribal agencies and the EPA Regional offices. Commenter noted that throughout the preamble of the proposed rule, the EPA refers to several previous guidance documents. EPA Response: This final action supersedes the 2007 Exceptional Events Rule and all natural events and exceptional events data handling guidance developed prior to the 2007 Exceptional Events Rule. This final action also supersedes the sections of the 2013 Interim Exceptional Events Implementation Guidance that address regulatory text discussed in this rule until such time as the EPA can revise these documents to reflect the revisions contained in these Exceptional Events Rule Revisions.

I understand your second question is asking for a citation to confirm agricultural burns are not considered 'prescribed fires' for purposes of the federal Exceptional Events regulatory approach.

Basic definition of an Exceptional Event is tied to **human activity unlikely to recur**:

40 CFR 50.1 (j) *Exceptional event* means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s), is not reasonably controllable or preventable, is an event(s) caused by human activity that is **unlikely to recur** at a particular location or a natural event(s), and is determined by [EPA]... to be an exceptional event.

Per 40 CFR 50.14(b)(3)(iii), **recurrence** for prescribed fires is either the natural fire return interval or the prescribed fire frequency needed to **establish, restore and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan** with a stated objective to establish, restore and/or maintain a sustainable and resilient **wildland ecosystem and/or to preserve endangered or threatened species** through a program of prescribed fire. Also, federal definition of Prescribed Fire for purposes of Exceptional Event is tied to the **objective of burn**:

40 CFR 50.1(m) *Prescribed fire* is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

In the final EPA response to comments (see attached) EPA states:

Comment: One commenter (D159) stated that the EPA should make it clear in the final rule that prescribed burns undertaken by private landowners consistent with their management plans meet the criteria for being an exceptional event.

EPA Response: We disagree with the comment on this point. Under the approach identified in the comment, any private landowner would effectively have a "shield" for prescribed fires conducted under a land management plan. We believe that the objectives of the management plan and the plan's process for planning and conducting prescribed fire matter with respect to the objectives of the CAA and the Exceptional Events Rule. The existence of identified objectives in a state or private management plan may not be sufficient under the exceptional events process or be consistent with the requirements of CAA section 319(b). Rather, the stated objectives must include those identified in this rule. The EPA is promulgating regulatory provisions that describe the process and requirements by which emissions from prescribed fires

on wildland causing an exceedance or violation of a NAAQS can be considered for exclusion under the Exceptional Events Rule. In finalizing these rule revisions, our intent is to clearly articulate the components needed to satisfy the statutory requirements under CAA section 319(b) and the Exceptional Events Rule. We recognize that addressing the prescribed fire related components of the rule for a prescribed fire on private land may take more original technical analysis and documentation creation/assembly than for a fire on federally managed land, because existing federal land management plans focusing on ecosystem goals may be a better starting point than a private land management plan focusing on economic productivity or other objectives. However, the same criteria should apply to both types of prescribed fire, and neither type of management plan should be a shield that avoids addressing the substantive criteria in the final rule. Section IV.F.2.b includes additional discussion of the use of land management plans in prescribed fire demonstrations.

Hope this helps.

Dorothy Crawford
U.S. EPA, Region 6, Air Monitoring
(214) 665-2771

From: Diana Scholtz <Diana.Scholtz@deq.ok.gov>
Sent: Friday, September 27, 2019 3:08 PM
To: Crawford, Dorothy <Crawford.Dorothy@epa.gov>
Subject: RE: SMP info

Good afternoon, Dot—

Thank you so much for your response. I do have follow-up questions on these 2 points.

In reference to my initial question, does the 2016 Exceptional Event Rule then supersede the Interim Fire Policy? Should I not refer to it in the SMP document and only cite the 2016 EER?

Regarding the Ag burning, there is one sentence where I believe I just left out the word “not” and put in “is considered prescribed burning”. I’ll change that. Can you please provide me with a citation since this contradiction has been brought up by Oklahoma FS?

Thank you so much!!
Happy Weekend!!
Diana

From: Crawford, Dorothy <Crawford.Dorothy@epa.gov>
Sent: Thursday, September 26, 2019 4:02 PM
To: Diana Scholtz <Diana.Scholtz@deq.ok.gov>
Cc: Verhalen, Frances <verhalen.frances@epa.gov>; Madden, Joshua <madden.joshua@epa.gov>
Subject: RE: SMP info

Diana, Thanks for reaching out. If you are updating the 2013 Oklahoma’s Smoke Management Plan anyway, then yes, I think it is appropriate to reflect the updated federal regulations. In fall of 2016, EPA finalized the revised federal Exceptional Events regulations. 40 CFR 50.14 relates to air agencies requests to exclude from certain regulatory decisions ambient air data that was influenced by events such as wildfires and prescribed burns. The fact that a state adopts and implements a smoke management program is a consideration related to one of the ‘prescribed fire’ Exceptional Event criteria, the not reasonably controllable or preventable criteria. Should ODEQ someday submit an Exceptional Event demonstration for an exceedance believed to have been caused by a prescribed burn, it would be helpful if the plan was current with federal regulations and guidance.

From a federal perspective, monitor exceedances believed to be caused by agriculture burns are not considered candidate ‘prescribed fire’ Exceptional Events. Generally, these situations would not meet the ‘human activity unlikely to recur or natural event’ criteria. These situations also do not work for the federal definition of a ‘prescribed fire’ (i.e., intentionally ignited by management actions in accordance with applicable laws, policies,

and regulations to meet specific land or resource management objectives) on wildland. So for the purposes of federal Exceptional Events and potential monitoring data exclusions, agricultural burns are not considered 'prescribed fires'.

Hope this helps.

Dorothy Crawford
U.S. EPA, Region 6, Air Monitoring
(214) 665-2771

From: Diana Scholtz <Diana.Scholtz@deq.ok.gov>
Sent: Thursday, September 26, 2019 3:34 PM
To: Crawford, Dorothy <Crawford.Dorothy@epa.gov>
Subject: SMP info

Good afternoon, Dot—

I'm currently in the process of a revision to the Oklahoma SMP.

Should I make reference EPA's Interim Fire Policy or the updated Exceptional Events Rule instead regarding the SMP?

Also, are open burning of agriculture waste, crop residue, or CRP lands still exempted burns in an SMP?

Thank you—

Diana Scholtz
Environmental Programs Specialist
Department of Environmental Quality
Air Quality Division
Rules and Planning Section
405-702-4214

diana.scholtz@deq.ok.gov

